



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CRM-M-10194-2020

Date of decision: 30.07.2024

Ashok Kumar Chauhan and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rakesh Verma, Advocate
for the petitioners.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioners are seeking quashing of Complaint No.49 dated 20.08.2019 titled as 'State Vs. M/s Pattar Pesticides Store & others' under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as 'Act') which are punishable under Section 29 of the Act (Annexure P-1) and all consequential proceedings arising therefrom including summoning order dated 20.08.2019 passed by learned Chief Judicial Magistrate, Kapurthala.

2. The allegations as levelled in the complaint (Annexure P-1) may be summed up as follows:

2A. On 11.06.2018, Insecticides Inspector Vishal Kaushal (hereinafter referred to as 'the Inspector') visited the premises of the dealer M/s Pattar Pesticides Store, VPO Khera Dona, Kapurthala (hereinafter referred to as 'the Firm') and collected a sample of insecticide, Chlorpyrifos 20% EC, Batch No.TA/S/25, with a



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manufacturing date of 09.03.2018 and an expiry date of 08.03.2020, purportedly manufactured by M/s Tropical Agro Systems (India) Pvt. Ltd., Ghaziabad (hereinafter referred to as 'Manufacturing Company'). Following the prescribed procedure under the Act, three samples were drawn and one of these sealed samples was sent to the State Insecticides Testing Laboratory, Amritsar (hereinafter referred to as 'Amritsar Laboratory'). According to the test report received from the Amritsar Laboratory on 11.07.2018, the sample was found to be 'misbranded', as the active ingredient content was only 17.97% against required ISI specification of 20%. Upon request, the reference sample was sent to Central Insecticides Laboratory, Faridabad (hereinafter referred to as 'Faridabad Laboratory'). The re-analysis report received from Faridabad Laboratory on 12.09.2018, also found the sample to be 'misbranded'. After completing the necessary formalities, including obtaining the requisite consent from the competent authority, the complaint was filed before learned CJM, Kapurthala under Sections 3(k)(i), 17, 18, 29 and 33 of the Act on 20.08.2019 (Annexure P-1).

2B. Vide order dated 20.08.2019 (Annexure P-2) the Court summoned all the accused, including the present petitioners, namely Ashok Kumar Chauhan (Director of the Manufacturing Company) and Ramesh Kaushik (Godown Incharge of the Manufacturing Company), to face trial. Hence, the present petition.

3. Learned counsel for the petitioners contends that the learned Trial Court has erroneously summoned the petitioners simply because they are the Director and Godown Incharge of the



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Manufacturing Company, without the necessary ingredients of the alleged offences being made out against them. It has been further pointed out by the learned counsel that a bare perusal of the complaint (Annexure P-1) reveals that the petitioners were casually made parties without there being any specific averments regarding their roles. Learned counsel relies on the case of ***State of NCT of Delhi Vs. Rajiv Khurana : 2010(3) RCR (Criminal) 912***, submitting that Section 33 of the Act mandates specific averments in the complaint about the accused being incharge or responsible for the business of the company. It has been asserted that in the absence of such averments, the complaint against the petitioners is not maintainable, and thus, continuation of proceedings would be an abuse of process of law. Learned counsel for the petitioners has further argued that the petitioners, though office bearers of the Manufacturing Company, are not concerned with the quality control section. The complaint itself indicates that Praveen Kumar Dhaka was appointed as the Quality Control Manager cum Responsible Person, responsible for maintaining product quality in compliance with Section 33 of the Act. Therefore, once a manufacturing unit has nominated a Quality Control Manager cum Responsible Person, other office bearers cannot be held liable. Learned counsel has supported this argument by placing reliance upon ***M/s Cheminova India Limited & Anr. Vs. State of Punjab & Ors, 2021 SCC OnLine SC 541*** and has asserted that the vicarious prosecution of the petitioners, who were not involved in quality control, constitutes an abuse of the process of law.



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4. Per contra, learned State counsel while opposing the prayer and submissions made by the counsel opposite, does not dispute that a Quality Control Manager was in place before the raid in question. However, learned State counsel submits that the petitioners, along with other accused have prima facie committed the offence punishable under Sections 3(k)(i), 17, 18, 29 and 33 of the Act, as they were office bearers, responsible for ensuring the quality of the insecticides. Learned State counsel has further argued that the defence of the petitioners, claiming that they were not incharge of the day to day affairs or of the conduct of the business of the Manufacturing Company, should be examined during trial when the evidence is presented. Nonetheless, learned State counsel does not dispute that the Manufacturing Company is already being proceeded against through its Quality Control Manager cum Responsible Person, Praveen Kumar Dhaka, who is also an accused in this complaint.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Before proceeding further, it would be apposite to reproduce the relevant provisions of the Act, as under:-

“3 (k) “misbranded”—an insecticide shall be deemed to be misbranded—

(1) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents;

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17. Prohibition of import and manufacture of certain insecticides.—

(1) No person shall, himself or by any person on his



behalf, import or manufacture—

(a) any misbranded insecticide;

(b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide except in accordance with the conditions on which it was registered;

(d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder: Provided that any person who has applied for registration of an insecticide under any of the provisos to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

18. Prohibition of sale, etc., of certain insecticides.—

(1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, transport, use, or cause to be used] by any worker—

(a) any insecticide which is not registered under this Act;

(b) any insecticide, the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, sell stock or exhibit for sale or distribute or use for commercial pest control operations any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act. Explanation.—For the purposes of this section an insecticide in respect of which any person has applied for a certificate of registration under any of the provisos to sub-section (1) of section 9, shall be deemed to be registered till the date on which the refusal to register such insecticide is notified in the Official Gazette.

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29. Offences and punishment.—

(1) Whoever,—

- (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or tc" (a) imports, manufactures, sells, stocks or exhibits for sale or distributes any insecticide deemed to be misbranded under sub-clause (i) or sub-clause (iii) or sub-clause (viii) of clause (k) of section 3; or"
- (b) imports or manufactures any insecticide without a certificate of registration; or tc" (b) imports or manufactures any insecticide without a certificate of registration; or"
- (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or tc" (c) manufactures, sells, stocks or exhibits for sale or distributes an insecticide without a licence; or"
- (d) sells or distributes an insecticide, in contravention of section 27; or tc" (d) sells or distributes an insecticide, in contravention of section 27; or"
- (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or tc" (e) causes an insecticide, the use of which has been prohibited under section 27, to be used by any worker; or"
- (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder, tc" (f) obstructs an Insecticide Inspector in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder,"

[shall be punishable—

- (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both; tc" (i) for the first offence, with imprisonment for a term which may extend to two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or



with both;"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.] tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to three years, or with fine which shall not be less than fifteen thousand rupees but which may extend to seventy-five thousand rupees, or with both.]"

(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 26 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]. tc "(2) Whoever uses an insecticide in contravention of any provision of this act or any rule made thereunder shall be punishable with fine 1 [which shall not be less than five hundred rupees but which may extend to five thousand rupees, or imprisonment for a term which may extend to six months, or with both]."

(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable— tc "(3) Whoever contravenes any of the other provisions of this Act or any rule made thereunder or any condition of a certificate of registration or licence granted thereunder, shall be punishable—

"(i) for the first offence, with imprisonment for a term which may extend to 3 [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both], tc" (i) for the first offence, with imprisonment for a term which may extend to 2 [one year, or with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees, or with both],"

(ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 4 [two years, or with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]. tc" (ii) for the second and a subsequent offence, with imprisonment for a term which may extend to 3 [two years, or with



fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees, or with both]."

(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct. tc "(4) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published in such newspapers or in such other manner as the court may direct.

33. Offences by companies.-

(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

7. In emphasizing the necessity for specific averments for



prosecution under Section 33, *Hon'ble the Supreme Court in Rajiv*

Khurana's case (supra) has held as under:-

“18. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.”

8. Similarly, Hon'ble the Supreme Court in *M/s Cheminova India Limited's case (supra)* regarding the liability of the Managing Director that the company had nominated other responsible persons, held as under:

“9. Section 33 of the Act deals with ‘offences by companies’. A reading of Section 33(1) of the Act, makes it clear that whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. In the case on hand, it is not in dispute that on behalf of the 1st Appellant – Company, 2nd Appellant – Managing Director has furnished an undertaking dated 22.01.2013, indicating that Shri Madhukar R. Gite, Manager of the Company, has been nominated in the resolution passed by the Company on 28.12.2012 to be in charge of and responsible to the said Company, to maintain the quality of the pesticides manufactured by the said Company and he was authorized to exercise all such powers and to take all such steps, as may be necessary or expedient to prevent the commission of any offence under the Act. Filing of such undertaking with the respondent is not disputed. Even, at Para 5.10 in the counter affidavit filed before this Court, it is pleaded by the Respondents that by appointing persons responsible for affairs of the Company, quality control, etc., 2nd Appellant – Managing Director cannot escape his liability



from offences committed by 1st Appellant – Company. In view of the specific provision in the Act dealing with the offences by companies, which fixes the responsibility and the responsible person of the Company for conduct of its business, by making bald and vague allegations, 2nd Appellant – Managing Director cannot be prosecuted on vague allegation that he being the Managing Director of the 1st Appellant – Company, is overall responsible person for the conduct of the business of the Company and of quality control, etc. In the instant case, the Company has passed a resolution, fixing responsibility of one of the Managers namely Mr. Madhukar R. Gite by way of a resolution and the same was furnished to the respondents by the 2nd Appellant in shape of an undertaking on 22.01.2013. When furnishing of such undertaking fixing the responsibility of the quality control of the products is not in dispute, there is no reason or justification for prosecuting the 2nd Appellant – Managing Director, on the vague and spacious plea that he was the Managing Director of the Company at the relevant time. A reading of Section 33 of the Act also makes it clear that only responsible person of the Company, as well as the Company alone shall be deemed to be guilty of the offence and shall be liable to be proceeded against. Though, the Managing Director is overall incharge of the affairs of the company, whether such officer is to be prosecuted or not, depends on the facts and circumstances of each case and the relevant provisions of law. Having regard to specific provision under Section 33 of the Act, and the undertaking filed in the present case, respondent cannot prosecute the 2nd Appellant herein. Thus, we find force in the contention of Mr. Sidharth Luthra, learned Senior Counsel, that allowing the prosecution against 2nd Appellant – Managing Director is nothing but, abuse of the process of law. At the same time, we do not find any ground at this stage to quash the proceedings against the 1st Appellant – Company.”

9. Adverting to the present case, the complaint indicates that petitioners Ashok Kumar Chauhan and Ramesh Kumar Kaushik are being prosecuted for being the Director and Godown Incharge of the Manufacturing Company respectively. However, there are no specific averments showing how these two individuals were incharge of the business or responsible for the Company's conduct or had any role in

quality control in the manufacture of insecticides.

10. Additionally, the complaint questions reveals that co-accused Praveen Kumar Dhaka was the Quality Control Manager cum Responsible Person, who had already furnished an affidavit to that effect. This fact has not been disputed by the learned State counsel and rather is reflected in the first page of the complaint itself as well as in paragraph 18 of the complaint. It has been asserted by the learned counsel for the petitioners that Praveen Kumar Dhaka, was directly responsible for the product quality, and it is a matter of record that he has already been proceeded against. Thus, a Quality Control Manager was in place well before the raid, making the vicarious liability of the petitioners untenable when the Manufacturing Company is already being proceeded against through the Quality Control Manager cum Responsible Person.

11. As a sequel to the above and in the light of the settled law, the instant petition is allowed and the complaint in question along with all consequential proceedings arising therefrom, including summoning order, are quashed qua the petitioners.

30.07.2024

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(MANJARI NEHRU KAUL)
JUDGE